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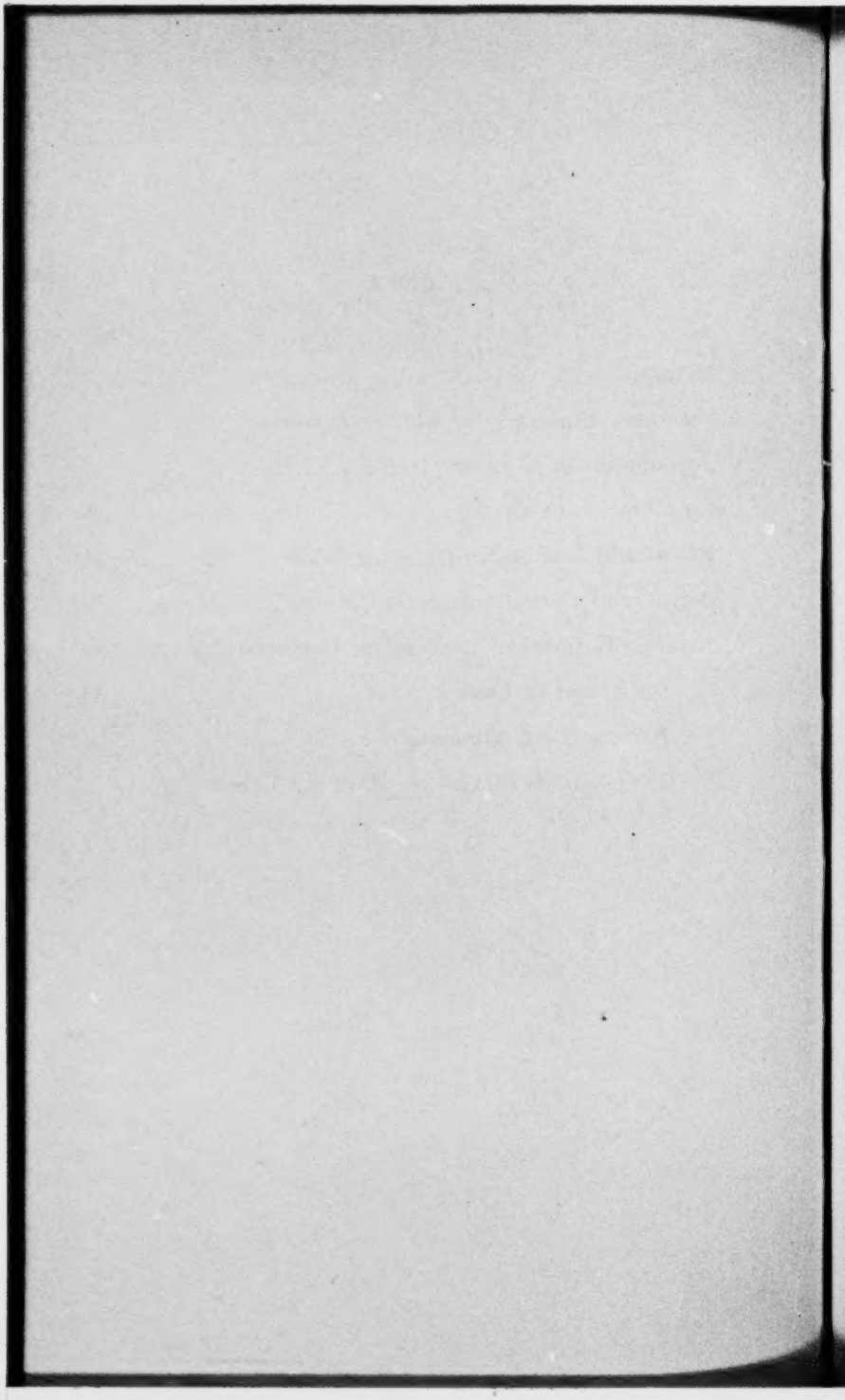

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No._____

C. T. EARLE, Petitioner

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, AND YAZOO & MISSISSIPPI VALLEY RAILROAD CO., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS AND THE SUPREME COURT OF TENNESSEE, AND BRIEF IN SUPPORT THEREOF.

PETITION

Petitioner, C. T. Earle, prays this Court to review on writ of certiorari a judgment of the Court of Appeals of the Western District of Tennessee, and the Supreme Court of Tennessee, in a case there entitled C. T. Earle vs. Illinois Central Railroad Co. et. al.

A final judgment of the Supreme Court of Tennessee was rendered July 25, 1942, when a petition for rehearing was denied (R 22 7). This court had previously, on June 27, 1942, denied a petition for writ of certiorari from the Court of Appeals of Tennessee, at

Jackson, in the Western District of Tennessee. No opinion was rendered by the Supreme Court other than the simple denial of the writ, and the judgment of the Supreme Court affirmed the judgment rendered by the Court of Appeals, and, in effect, endorsed the opinion of that court. The Court of Appeals rendered its opinion and judgment on February 20, 1942, (R 225). The petition for writ of certiorari was filed in due time on March 16, 1942, and was denied with results as stated.

The action of these courts was to reverse a judgment (decree) of the Shelby County Chancery Court, rendered April 21, 1941, which appears in the record (R 29-33), following the opinion of that court (R 34-40). This decree had granted to petitioner, as complainant, a recovery of $11,728.35 as damages for breach of a railroad labor contract of employment, for unjust discharge of petitioner, a yardman.

The defendant railroads appealed to the Court of Appeals, from this judgment, and assigned numerous errors. The Court of Appeals reversed, and petition for certiorari was filed, based on seven assignments of error, one of which, Assignment 7., (R 229) embodies the federal question.

The procedure under Tennessee statutes is that where a certiorari is denied by the Supreme Court, the record is returned and lodged with the Court of Appeals. However, the clerk of the Supreme Court at Jackson, Tenn., serves as clerk of the Court of Appeals, Mr. J. E. Springbett. (22 Tenn. App. Rep. 5.: 175 Tenn. 6.) His title is simply, Clerk of the Supreme

Court, Jackson, Tenn. To avoid technical objection, petitioner prays for certiorari to both courts.

Tennessee Supreme Court Rule II allows 45 days for filing petition for certiorari from Court of Appeals. 173 Tenn. 872. Under Rule 32, petition for rehearing may be filed within 10 days from date opinion is announced. 173 Tenn. 886. Opinion was announced June 27, 1942. Petition for rehearing filed July 6, 1942.

SUMMARY STATEMENT OF THE MATTER INVOLVED

C. T. Earle was employed by the Illinois Central Railroad Company, and its subsidiary, the Yazoo & Mississippi Valley Railroad Company, Sept. 26, 1923, as a switchman, or yardman, and continued in their service until July 26, 1933, when he was discharged.

The Brotherhood of Railroad Trainmen had a written contract with the railroads, governing the terms of employment of yardmen, as well as other types of employees. This contract was printed and booklets containing same were distributed among the employees. Earle had such a booklet, which he filed as exhibit 2 to his bill in Chancery. The booklet contains other contracts, that of trainmen, that of Chicago Suburban trainmen, the yardmen contract being found on pages 32-41. (Exhibit 2 to the Bill, exhibited with this record.) R 95-109

The discharge was effected by means of a letter written to Earle by the railroads, dated July 26, 1933, as follows:

"This is to advise that effective this date your name has been removed from the seniority list, due to the fact that you have not performed service off the regular extra board for a period of six months.

Call at superintendent's office and turn in any company property that you may have in your possession.

E. Bodamer,
J. R. Burns, Trainmasters."

See letter copied in bill, (R 3-4), and opinion of Court of Appeals, (R 16)

Petitioner, suing on this contract, claimed that thereunder discharge could only be made for just cause found upon a trial; that no just cause existed, and no trial was given; that the letter constituted a breach of contract; that, thus, he had been deprived of his right to work and earn pay according to his seniority, and had been damaged.

Petitioner then goes on to say that the factual matter in the letter is untrue because he did perform service, his usual type of yardman service, on May 29, 30, 31st, and June 30, 1933, well within the six months; and that he was on the regular extra board when he did so, there being no other board.

The Bill (R 4)

The railroads in their answer concede that petitioner performed the service as above stated, but that it did not count because his name was not on the regular extra board at the time.

As to the contract exhibited and sued on, the railroads say of it, that it was not the entire contract, but

only a part of it; that there were other parts of the contract. Having thus said, the railroads freely make contract averments in their answer, thus:

> "It was further provided by said agreement between defendants and the labor organization that if any employee was not called to work from this extra board for a period of six months, such employee by the lapse of time was no longer an employee of defendants and lost his seniority rights and all other rights.
>
> It was further provided by said agreement between defendants and the said labor organization that if an employee's name did not appear on said extra board, nevertheless, defendants had the right to call said employee for work after all the names on said extra board had been exhausted, and it was further agreed that in the event an employee whose name did not appear on said extra board was called for work and did perform work, such work constituted emergency work and that emergency work did not affect the six months period as aforesaid."
>
> The Answer (R 12-13)

Petitioner promptly filed a motion to strike these averments from the answer on the ground that they were not to be found in the contract sued on, and were in conflict therewith.

The Motion to Strike (R 19-26)

The Chancellor reserved the matter of the motion for the hearing, and did not expressly pass on same then, but decided the case on the full merits in favor of petitioner. The virtue of this motion was urged on the appellate courts.

The Chancellor finds and holds that there was no

trial given petitioner, and no just cause for his discharge; that the letter constituted a wrongful discharge, entitling him to damages for time lost. The Chancellor also finds that petitioner performed service on May 29, 30, 31st, and June 30, 1933, well within the six months; that it was not material whether his name was on the extra board, or not, there being no provision in the contract requiring that feature.

Chancellor's Opinion (R34-40) Decree (R39-33)

The Court of Appeals finds and holds that petitioner performed his usual duties as a yardman on May 29, 30, 31, and June 30, 1933, but holds that he was not 'in service' on those dates; that he had been let out, Jan 20, 1933, along with 55 or 60 others, in a reduction of force, after which he sustained no relationship to the railroads other than that contemplated by a certain 'Request & Answer 79'. This is one among numerous requests and answers, of the year 1914, which are printed in the back of the booklet filed as exhibit 2 to the bill, and exhibited with this record. See page 56. R154

> "Request 79. That when trainmen are laid off account of reduction in force, they shall retain their seniority and be returned to the service when business justifies, in accordance with their seniority standing, provided they be returned to the service within one year.
>
> Answer. I said to the Committee that a letter would be issued stating that it was the policy of the Management in employing men to take back into the service those who were laid off account of falling off in business, unless there was some particular objection, and that in future, men that were laid off account of falling off in business if they kept in touch with the Division Officers so as to be available, would be re-employed in preference

to men not heretofore in the service. If they are not out of the service to exceed six (6) months, they will be considered as having been in continuous service."

The Court of Appeals holds that petitioner was 'out of service' when he was let out on a reduction of force, and on the four days he worked he was not 'in the service', and the fact that he was not regarded as 'in the service' was evidenced by the fact that his name was not put on the extra board; and that when the letter was written, July 26, 1933, the relationship had fully terminated by the expiration of the six months period, and the railroads were under no obligation to re-employ him; and the letter was in effect no more than a notice that they did not intend to re-employ him; and was not a breach of contract.

Opinion Court of Appeals (R 222)

As to the trial provisions of the contract the Court of Appeals holds in line with the great weight of authority, including, Moore vs I. C. R. R., 312 U. S. 630, and 112 Fed (2nd) 959, that:

"They take the view that the stipulation that the cause of discharge shall be found unjust implies that the severance of the relationship is not to be at the employer's will but only for just cause, and further that it would be unreasonable to hold that the railroad officials are the final judges of the justness of the cause.

This seems to be the view adopted by our Supreme Court, (Tenn.) and we do not understand that the contrary is contended for by defendants in this case."

Opinion Court of Appeals (R 174)

Applying this law to the instant case the Court of Appeals holds that if the railroads did not give petitioner the trial to which he was entitled, petitioner has now had a trial in court; the court in effect holding as justified the ground of dismissal, that is that petitioner had been out of service to exceed six months; reaching this conclusion by the court's holding that at the time he worked on the three days in May, and one in June, 1933, he was not then 'in the service'.

Opinion of Court of Appeals (R176-177)

Both the Chancellor and the Court of Appeals held that the contract was wholly in writing.

Opinion of Court of Appeals (R209)

Request & Answer 79, dated, March 11, 1914. Labor contract, pages 32-41, Exhibit 2 to bill, dated, effective. April 1, 1924.

See exhibit 2 to bill. Pages 32-41, and pages 54-56.

R 95-109 R 134

JURISDICTION OF THIS COURT

Jurisdiction of this Court is based on Sec. 237 of the Judicial Code, as amended by the Act. of Feb. 13, 1925, Ch. 299. Sec. I. 43 Stat. 937, and by Act of Jan. 31, 1928, Ch. 14, Sec. I., 45 Stat. 54. 28 U. S. C. A. 344: (Pittman vs. Home Owners Loan Corp. 308 U. S. 21), authorizing petitions for writs of certiorari to be prayed for and issued to higher courts of various states where "a title, right, privilege, or immunity is set forth and claimed under a statute of the United States."

The Supreme Court of Tennessee is the highest court of that state as set forth in Art. VI Sec. I, of Constitution of Tenn., 1870.

In this case a title, right, privilege and immunity were set forth and claimed under U. S. Statutes, to-wit; 44 Stat. 577, and 48 Stat. 1185, the Railway Labor Act. This claim was made, (1st) in a Proposition of Fact, No. 29, filed and presented to the Chancery Court, which became a part of the record in the Court of Appeals, and Supreme Court, and being now made a part of the present record. (2nd) By Assignment of Error No. 7. in the petition for certiorari presented to the Supreme Court. (R 127-132) 228-230

The Chancery Court preserved the right, title, privilege, and immunity claimed, and the Court of Appeals, in reversing the Chancery Court, and the Supreme Court, in denying certiorari, denied the right, title, privilege and immunity claimed.

The right, title, privilege, and immunity claimed are determinative of the issues of the case; and the errors of the appellate courts are fundamental, and their decisions do not rest upon any non-federal grounds adequate to support same.

SPECIFICATIONS OF ERRORS ON THE QUESTIONS PRESENTED

Your petitioner submits that the Court of Appeals and the Supreme Court of Tennessee were in error in the following respects:

I

The courts erred in holding that petitioner was not in the service of the railroads on the days he ren-

dered service as a yardman, May 29, 30, 31, and June 30, 1933. (R 222). This holding was determinative as declared by the courts. It was in conflict with the definition of the terms, "employee' and "in the service", in the Railway Labor Act. Sec. I, fifth, (44 Stat. 577), and with the construction of that Act by the Railway Labor Board, The Interstate Commerce Commission, and the Federal Courts.

II

The courts erred in permitting to remain in the defendants' answer, over a motion to strike, averments of contract terms which were not to be found in the written contract sued on, and which were, in substance, as follows: that unless an employee was called to work from an extra board within six months he was automatically out of a job; and even if he was called to work and did work within six months, if his name was not on the extra board, his work did not count to preserve his job. (R 9-26)

The courts carried the error further in that they changed the averments of contract terms to averments of usage and practice, and then held such usage and practice binding on petitioner by acquiescence, failing to find averments of contract terms supported. The courts, strange to say, declared this usage and practice to be in conflict with the contract. (R 57-189) 193-194

Thus is violated Sec. 6. of the Railway Labor Act, which forbids a change in a contract except upon written notice followed by negotiation and agreement, as well as Sec. 2, first, of that Act, under which the railroads had made, but were not maintaining the con-

tract they had made. A contract, implied, found dehors the pleadings, in usage and acquiescence, in conflict with the written contract, is substituted for that contract.

III

The courts erred in refusing to enforce upon the railroads an estoppel based upon the Railway Labor Act of 1926, as amended in 1934, in that by the 1934 amendment (48 Stat. 1185, Sec. 5 (e)) the railroads were required to file with the Mediation Board a copy of their contracts with various classifications of employees, including yardmen, and, pursuant thereto, they did file with the Board a copy of the yardmen contract, which proves to be identical with the contract sued on in exhibit 2 to the bill, pages 32-41, effective April 1, 1924. See Document produced in response to Demand No. 5, for production of documents.

R 109 A 95-109

This is a statutory estoppel invoked by petitioner, and denied by the courts. It lies under a 1934 amendment, but it produces into the record a contract dated 1924. Petitioner, discharged in 1933, claims, the benefit of this estoppel.

IV

The courts erred in reversing the decree of the chancery court of Shelby County, Tenn., which court had sustained the bill and granted a recovery of damages for breach of contract, the appellate courts reversing the decree and dismissing the bill. This was error in that undisputed facts were that petitioner, a yardman in the employ of the railroads since 1923, was discharged without a trial as provided in the contract, and

without any just cause, and without any reason assigned other than the mere claim that he had not performed service off an extra board within the prior six months, on which matter he had been given no trial or hearing. The reason assigned having narrowed, by undisputed facts, to the mere claim that petitioner was not on the extra board when he actually worked within the six months, the courts were in error in sustaining this as a just cause for discharge, a conclusion which they reached by holdings in conflict with the Railway Labor Act of 1926.

REASONS RELIED ON FOR GRANTING THE WRIT

It is submitted that this court should entertain jurisdiction for the following reasons:

I

The question is substantial and of importance, involving a construction of the Railway Labor Act of 1926 (44 Stat. 577), and affecting materially the rights of railroad labor.

The Tennessee appellate courts held that petitioner, a yardman in the employ of defendants since Sept. 1923, having been laid off on a reduction of force, Jan. 20, 1933, was not "in the service" of defendants on May 29, 30, 31, and June 30, 1933, when, on those dates he was called upon to, and did, render his usual type of service as yardman. (R 22-22)

The Railway Labor Act, Sec. I. Fifth, defines "employee," and "the service", and these terms have been

construed by the Railway Labor Board, The Interstate Commerce Commission, The Mediation Board, and the Federal Courts, to include and mean those employees who have been laid off on a reduction of force, even when no actual service was being rendered.

N. C. & St. L. Ry. Co. vs Employees Dept. A. F. of L. (6th Cir.) 93 Fed. (2nd) 340. Certiorari denied, 303 U. S. 649.

The views of all the above mentioned authorities are fully set forth in the opinion in the case cited. The Tennessee courts conflict with the statutes and the authorities interpreting same.

The decision of the Tennessee courts against petitioner results directly and solely from their holding above set out. Had these courts held that petitioner was "in the service" on the dates mentioned, they would have decided for him. The matter was crucial and determinative, leaving not only no non-federal ground, but no other ground, adequate to support a decision against him, none other being claimed. These courts, themselves, say the question is ultimate and determinative. (R 202)

The defendants had assigned in their letter of dismissal the ground that petitioner "had not performed service off the regular extra board within the past six months," and when it developed that he had actually performed service well within the six months, this left of the ground assigned only the feature of not being on the extra board at the time.

Such, as a ground to be sustained as just, must have struck the Tennessee courts as too superficial, and

they hold that his not being on the extra board was but evidentiary matter, indicating that he was "not regarded as in the service." In this way, by holding that petitioner was not "in the service," the Tennessee courts support the ground assigned in the dismissal letter as a just cause, and defeat his case . (R 198)

II

The Railway Labor Act is violated in other features by the defendants in their pleadings, and by the courts in their holdings.

This Act provides in Sec. 2.

> "Sec. 2. First. It shall be the duty of all carriers, their officers, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions—"

And in Sec. 6.

Sec. 6. provides that changes in the agreement may be made only by negotiation upon thirty days written notice.

1. The defendants violated the Act in their pleadings. Petitioner based his suit upon the agreement which defendants had "made", but when defendants file their answer, they denounce the contract as only a part of a contract, in page 2 of their answer (R 12), they say it was merely "the most important and most used provisions of the contract". Then they feel free to aver, and do aver, other contract terms, as set out, supra, in the summary statement of this petition.

Answer (R 12-13)

We submit that this constitutes a failure to "maintain" the agreement, and a change of the agreement in a manner forbidden by the Act.

2. A study of the averments in defendants' answer and the opinion of the courts reveals this fact:

Nowhere in the opinion do the courts sustain the averments of contract terms found in defendants' answer. Indeed, they do the opposite. They mention an agreement between officials of the Brotherhood and officials of the railroads for the addition of seven words to the Answer to Request 79, to-wit: "emergency work not to be considered service", but they hold that this was not binding on petitioner, because they were not published until 1936, three years after his discharge, nor were they otherwise brought to his attention. No where else do they hold that there was an "agreement", but, in lieu, they hold that there was a "uniform practice", or "implied understanding", or "usage"; and, even of these usages and practices, they say that they were in "direct contravention of the requirements of the agreement" (R 223) 193

This action of the courts, first, in not striking from the answer the contract averments, on the motion to strike duly filed by petitioner, and, second in substituting for the averments of contract terms, unsustained, the courts' findings of "uniform practice", "implied understanding", "usage", etc.—such action of the courts is but a deepened disregard of the provisions of the Railway Labor Act above noted.

The findings of "uniform practice," etc., constitute a distinct variance from the averments in the pleadings,

and are, coram non judice, and not binding as fact findings.

Pencil Co. vs R. R. 124 Tenn. 57.

3. The Tennessee courts in their logic advance toward their goal of establishing that petitioner was not "in the service" on the days he actually worked, for several pages (R204-209) toy with the idea of putting him on the basis of separate and distinct contracts, for the days he worked, to arise by implication, and acquiescence, with terms fixed by usage. Such would have been another distinct variance from the averments in the pleadings. The courts, however, finally hold (R 209) that the contract was wholly in writing.

4. The logic steps of the courts are these:

By uniform practice, usage, etc., petitioner was not regarded as returned to the service when he was called to work on the four days, because there were some 30 men senior to him who could have complained if such work were considered service. He was "regarded as not in the service"; and the courts hold that he was not "in the service" on the days he worked. Therefore, by July 26, 1933, the date the dismissal letter was written, petitioner had been "out of the service" to exceed six months. R 199-201

The concluding sentence to the Answer to Request 79 is:

> "If they are not out of the service to exceed six months, they will be considered as having been in continuous service."

This sentence is construed to mean:

> "If they are out of the service to exceed six months they are automatically out of a job."

So by holding that petitioner was not "in the service on the four days he worked, the courts are equipped to say that he was "out of the service" to exceed six months, by July 26, 1933, and was out of a job; so that the letter written on that date was in effect simply a notice that petitioner was out of a job, and the railroads did not intend to re-employ him. R 222

This holding was vital, and determinative of the case.

A STUDY OF THE COURT OF APPEALS OPINION

This opinion is the source of the few elemental, determinative facts, upon which the questions, of law, are presented to this court. The great bulk of the opinion, however, is devoted to setting up and trying a case which was not presented by the pleadings, the bill and answer. It undertakes to revise, amend, and change, both pleadings, the bill and answer. The bill sued for a breach of contract by wrongful discharge, accomplished by a letter. The opinion changes this to a suit for breach of a contract to re-employ. The answer avers contract terms, saying it was the "agreement", but the opinion changes this so as to plead it was the "understanding", or "uniform practice." R 157-159

And the court in its findings does not support the averments of contract terms, but undertakes to support by oral evidence and interpretation its own substituted

pleadings of "understanding", "uniform practice", "usage".

Other averments of fact in the answer are not supported. For instance in the answer is found the following averment of fact:

> "Defendants say it so happened that during the period of six months prior to July 26, 1933, the business of defendants was such that it was not necessary to place on said extra board a sufficient number of names, when placed in the order of their seniority, to include on said extra board the name of complainant, and that for said reason complainant's name did not appear thereon for more than six months prior to July 26, 1933." R 15

The court does not find in its opinion that there was no such increase in business. This is an interesting averment. To employees laid off Jan. 20, 1933, it concerned them very much as to whether or not the railroad again needed them. This involved an important fact question on which the employees should have a trial under the trial provisions of the contract, unless arbitrary power is to be handed the railroads. Yet this fact averment is nowhere supported in the opinion.

On the contrary there are some findings which militate against it, found on page —— (R 17) We quote:

> "For instance they (the minutes of the local lodge of the Brotherhood of Ry. Trainmen) show in substance the following: That on March 22, 1930, a motion prevailed that 'the men cut off the extra board be called back and permitted to make some time and then be cut off the board': That on May 18, 1933, a motion prevailed that 'the local chairman be empowered to place on the Memphis Ter-

minal extra board of May 25 the members who had been cut off less than six months': that on May 24, 1933, the local chairman reported that 'Trainmaster Burns refused to place the men on the board as requested, which report was accepted and the case closed."

Thus, the men, those working and those laid off alike, wanted the board increased, and they deemed an increase proper and in order, they being the parties affected thereby, and the railroads refused. Had this request been honored there would have been no such suit as this, as petitioner would have been working all these years, as he most desired. But railroad officialdom, the local part of it, preferred not to be denied a brief return of the sovereign power of firing at will which was embryonic in the situation to be enjoyed by the operation of the six months rule. Too good a chance to be missed, and a chance that might be expected to occur only in major depressions.

However, the courts by construction of Request & Answer 79, provide the railroads with a perfect engine for destruction of seniority rights of employees, thus:

The railroads can cut the extra board, and the men cut off are not entitled to a trial on the necessity of the cut. They are faced with an expiring seniority, and right to a job, unless they are called back on an increase of the board within six months. No trial is theirs as to the necessity, vel non, of the increase. The railroads can then keep the board cut, and in the meantime supply their own needs for additional help by the expedient of "emergency work," that is by calling men, those cut off, or anybody, without reference to seniority, and get all the service needed. In this way, with com-

fort, the railroads can keep the board cut for six months, and then enjoy the sovereign power of firing at will, call it by other names if it pleases. Then, if one of the men, as Earle in this case, protests and fights in the courts, he is told that, though he worked, he was called out of seniority order and his work does not count, being "emergency work"; because, if it should be counted, it would mean that some 30 men, his seniors, not called, could complain that he had been preferred in violation of the seniority provisions of the contract. Implicit here is the assumption that, of course, the railroads would do no wrong, would not violate the contract by preferring junior men over seniors; and if it was actually done, it must be said that it was not done, that the work is not "regarded as service"; so that it will not have been done. At the end of six months Earle's seniors are told that they are out of a job because they did not work, and Earle is told that he is out of a job, because the work he did should have gone to his seniors, and comfortably to the railroads, all are out of their jobs. And this is not Gilbert & Sullivan, but serious litigation in courts.

In the construction every favorable inference is given the railroads; none to the petitioner, who is frowned upon by the courts for his contentions in court. (R 203-). The only stain on petitioner's contract is the grime of his toil. He read it. He worked under it. He stood by under it, weathering a depression. He responded when called, and worked.

The Court of Appeals points out, however, that when he worked the four days, there were 30 seniors to him, among those laid off with him in January, and this

made his call to work irregular, or out of seniority order.

Art. II. Sec. B. of the contract page 36, Exhibit 2 to Bill, is:

> "The right to preference of work and promotion will be governed by seniority in the service. The yardman oldest in the service will be given preference, if competent."

R 101

There may, indeed, have been a violation of this section. We do not know. It would depend on whether any of the 30 seniors cared to work or were available, or not. If there was a violation, it was by the railroads, not by petitioner. His sole duty was to respond and perform service. He was not the keeper of the seniority list, nor the extra board, and had none of the facilities for determining the proper order of calling employees to work, nor was that his duty, or in his power. The railroads, not he, had the facilities, and the duty of determining who was available. It might be the case that none were available; and it might be they were. It may be they are now suing for violations of their rights. To defeat this petitioner, or to sustain his claim, will neither help nor hurt the cause of any one of his seniors. Had all of them joined in one suit, it would have been ruled out as multifarious.

All of the reasoning of the courts lead to the one point of their holding, that petitioner was not "in the service" on the days he worked.

Your petitioner presents herewith as a part of this petition a certified copy of the transcript of the record in the Court of Appeals, and the Supreme Court of

Tennessee, which presents the questions, and presents his brief for consideration with his petition.

We have no dispute on the facts, but only as to conclusions therefrom, and the law. The opinion of the Tennessee courts is conclusive on the facts. Hence the transcript omits the testimony in the case, and is adequate to present the federal questions involved.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this Court to the Court of Appeals, and the Supreme Court of Tennessee, commanding said courts to certify and send to this Court on a day certain to be designated a certified transcript of the case, entitled there, C. T. Earle vs. Illinois Central Railroad Co. et. al., to the end that said case may be reviewed and determined by this court, and that petitioner may have such relief as this Court may deem proper, lawful and equitable, and that the opinion and judgment of both courts, the Court of Appeals and the Supreme Court of Tennessee may be reversed, and the decree of the Chancery Court of Shelby County, Tennessee may be affirmed.

C. T. Earle

C. T. EARLE, Petitioner.

Wm. M. Hall

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